Permanency Hearings: How Can Busy Courts Hold Quality Hearings?

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PERMANENCY HEARINGS

- Participation: Parent, Child (court will "consult with child in an age appropriate manner"), Relative caretakers and foster parents (entitled to notice and opportunity to be heard – "right to be heard")
- Full hearing
- Independent judicial review

Timing:

- Within 12 months of the removal or
- Within 30 days of a judicial determination that reasonable efforts to help a child safely return home are not required
- Every 12 months thereafter as long as child is in foster care

Federal Requirement

- Caretaker has "right to be heard" is in Safe and Timely Interstate Placement of Children Act of 2006
- Court must consult with child re permanency plan and goal is in Child and Family Service Improvement Act of 2006 – "court ...consults, in an age appropriate manner, with the child regarding the proposed permanency or transition plan....."
- Every permanency hearing must have goal and reasonable efforts finding in order – Adoption and Safe Families Act of 1997

Role of GAL

- Wyoming has hybrid role GAL to provide both Best Interests and Child's wishes
- Important to see and talk to the child on frequent basis child has right to understand process as well as right to provide input
- Should be discussing the perm goal with child
- Should be advancing service needs child may have
- Should be discussing appearing with the child and preparing child to appear

Not Enough TIME??

- Focus on the situations that cause time problems in cases and get them resolved ASAP
- Stop the time cycle not enough time to deal with the issues leads to longer time in foster care leads to more issues

Permanency Time Bombs

Time bombs may explode if they are not diffused

Time bombs can explode and hurt anyone or everyone

Time bombs hurt no matter what the goal is – not just for TPR and adoption

Diffuse them early on – use the power of the court process to deal with the bombs

Best Practices to ID your bombs and diffuse

The Top Ten Legal Time Bombs

- ID of and working with fathers
- ID of relatives as placement resources
- ICWA
- ICPC
- Good quality initial placements
- Hearing continuances
- Front Loaded Services
- Detailed, behavior oriented court orders
- "Fear" of concurrent planning
- Effective meaningful permanency hearings

ACTIVISM FOR PERMANENCY

 This is not just the job of caseworkers - Lawyers and Judges can and should DIFFUSE the bombs and not just clean up after the explosion

When do "RE" for perm begin?

Interesting dissent in <u>Matter of H. Children</u>
 79 P3d 997 (2004)

What about while case is pending?

"Whose Your Daddy?"

- ID of fathers critical largest time bomb
- Right of the child to identity, support, possible permanency resource
- Right of the father to information, option to parent, right to services
- Importance re ICWA, relatives
- Late arrival of Dad = loss of permanency option, loss of relationship, legal delays
- Can lead to serious problems at TPR

Ideas

- Court should ask mother directly
- Agency should have known extensive diligent search process including using child support units/ parent locator process
- Court should order agency to look and report
- All Attorneys should ask
- Court should continue to ask at every hearing until father ID'ed, located, involved

More Ideas

- Do paternity testing
- Don't accept "there is no father"
- Fathers deserve services too specialized?
- Fathers need to know if permanency plan is not going to work – give them a chance
- Even a father who cannot be a resource may have something to offer a child
- Incarcerated does not mean ignore
- If tpr-ing mom or accepting surrender MUST deal with dad

"Where's Your Granny?"

- Relatives are good resources
- Keep sibs together
- Use extended family support
- Provide "extra" for kids/parents contact, visitation, modeling, less trauma
- "Save the foster beds!"
- Can develop into permanency if needed

Ideas

- Court should ask parents directly use power of the court to get the info ASAP
- Relatives should be brought to court
- Agency should have specific process and recording – booklet to provide
- EVERYONE should understand the legal options and make sure relatives are told of same – custody, guardianship, foster parent status, adoption

More Ideas

- Consider ICPC requests right away
- Placement relative resources should be at every hearing
- "Relatives" is a relative thing
- Avoid the "pop up"
- Do relatives understand "stepping up to the plate", timeliness and bonding?
- Ask relatives about fathers and ICWA status

Some Wyoming Caselaw on Relatives

- Is it required reasonable efforts?
- Matter of DH,AP and JK 173 P3d 365
 (2007) among other things described as "reasonable efforts" the attempt to place with relatives and doing home evals for all relatives and determining suitablity
- Matter of JW and BJ,Jr. 2010 WL 965306 (2010) – reversal of denial of placement with relatives

"Where did everybody go?"

- Are there any parents or relatives outside of Wyoming?
- Consider ICPC requests right away
- Would out of state placement help or hurt current goal?
- Is anyone incarcerated?
- Do parents understand options?
- Do non-Wyoming folks understand permanency needs and likely bonding?

"Do we have an ICWA child?"

- Court must ask and ask- until there is an answer
- Agency must have process and documentation
- All Attorneys should ask
- More hands = more help, more services, more options
- Tribe/Indian Nation should be involved as quickly as possible

Good Initial Placements

- "A body in foster care tends to stay in foster care"
- "It was on my way home" "They answered the phone"
- ASK, ASK, ASK
- Placed with sibs? Why not? What contact?
- Visitation How frequent, quality, supervision questions, who, reward/punishment?

Matter of ATE, KOE, ETE, ME FDE 222 P3d 142 (2009)

Affirmed the dismissal of TPR of father – no reasonable efforts made: five workers, some for only a few months, continuing issue of father's use of marijuana – was not the reason for the children's removal, agency would not allow visits with children due to pos tox for marijuana – this was not the court's order where only should deny visits when actually under the influence at the time of the visit, no visits meant no parenting classes were permitted, when court ordered that he was to have visits even if pos tox, agency then implied they would have him arrested if he tested positive - the case had been about the children having appropriate medical, dental, care and a clean safe environment and turned into a case of agency requiring that father demo he wanted children more then pot

MORE

- Same school, same church, same neighborhood?
- Good placements are everybody's concern
- Will the placement be "concurrent" if needed?
- Placement resources as service advocates and court participants

Hearing Continuances

- Hurts everyone
- "Is this really needed?"
- Change the culture we can do better
- Child's timeframe
- Same Judge, same attorneys
- Attorneys aboard right away
- Short time, clear purpose
- ID person who will have answer next time

Front Loaded Services

- Legal options/ practice to encourage immediate service engagement
- Services must be available
- "Immunity" re statements to service providers if no adjudication yet?
- "Better deal" if service accomplished drug court model
- Judicial activism re services

Court Orders

- Not just a "to do" list
- Too concrete not measurable
- Confusing if not unfair to parent
- "Here's my parenting certificate gimme my kid"
- "Resetting the bar"
- Hard change takes more thought
- Can the parent read the order?

Court orders with behavioral language:

NOT JUST ATTEND

- Mother gets
 evaluation and
 follows
 recommendations
- Mother completes parenting classes
- Mother goes to drug treatment
- Mother cooperates with agency

BETTER TO ALSO ADD

- Mother demonstrates:
 - effective coping
 - energy and activity to perform basic parenting duties of feeding, clothing, supervision, protection from harm
- Mother demonstrates learned proper supervision and discipline techniques during visitation
- Mother develops plan for child's safety if she relapses

Meaningful Permanency Hearings

Have them as often as needed

Get everybody there – parents, child, foster parents/relatives – service providers?

Focus on both "look back" and "look forward"

Meaningful eval of goal

Visitation – from child's POV as well

Services – from child's POV as well

Value of Including Foster Parents

- Right to notice and right to be heard
- Only people who see the child every day
- Often see the parent interact with the child
- Bond with the child
- Have educational information
- Take the child to medical appointments
- Can report how the child has changed since entering foster care
- Know the child's ability to take care of herself
- May be a permanent resource for the child

Value of Including Children

- Feds- "consult with child" regarding perm plan as part of perm hearing decision
- Who better? No "interpretation" best interests only does not comply
- "Not about me, without me"
- "Fear" of child's emotion
- Practical problems can be solved
- This is important

Concurrent Planning

- Differential Tracks Not a "Fast Track"
- Consider CP for each case; develop grid of those most likely to stay in care and characteristics of family
- Sequential planning creates delay- promote early permanency decisions
- Reduction in the number of moves and relationship disruptions
- Decrease the length of stay in out of home care
- Increase timely and safe reunification through strengthened family skills

Reasonable Efforts to Finalize the Permanency Plan

Second required R/E finding under ASFA

 Judicial finding - whether the agency provided reasonable efforts to finalize the permanency plan.



- Within 12 months of the child's entry into foster care and every 12 months thereafter.
- A negative, late, insufficient or missing finding means the agency is ineligible for IV-E dollars until the court makes a positive finding.
- The finding must be detailed and child specific.

What Is Permanency?

- Stability without disruption
- Safe and nurturing home environment and set of relationships
- Growing up with siblings
- Connections of Community of Origin
- Religion and Culture Preserved
- Gives child a sense of belonging and a definitive legal and social status

- Educational needs met
- Healing of past trauma
- Physical/ Emotional Needs met
- Contact with family of origin if appropriate
- Opportunity to live in a permanent home, one which can be returned to for support even as an adult; home intended to last indefinitely

Reasonable Efforts: Reunification

ASFA: Reunification is appropriate when:

- (1) Parent is working diligently on the plan
- (2) Specific time frame
- (3) Consistent with child's developmental needs

Reas Efforts Questions:

- Have all services to enable the parent to safely care for the child been offered?
- Nexus between services and underlying problems?
- Parents- participation AND benefit? Change in behavior?
- Assess the risk. Have we "raised the bar?"

Reasonable Efforts: Adoption

- TPR petition prepared? Service? Date for trial?
- How will the case proceed if parent is missing?
- Has the agency explored open adoption?
- Can pretrial issues be resolved?
- Did adoptive resource recruitment as soon as TPR is filed or earlier?
- What's the child's position, and how old is the child?
- Are current caretakers or relatives an adoptive resource? Provided information?

Adoption Subsidies

Have any prospective preadoptive parents been counseled on adoption assistance and subsidy issues?

- regular monthly payments
- medical coverage
- respite care
- special costs, such as ramps or wheelchairs
- special services: speech and language instruction, physical therapy
- family or individual counseling
- one time legal costs
- Has renegotiation been explained?

Reas. Efforts: Guardianship/ Kinship Care

- What is the quality and nature of relationship to the child—is this the best placement?
- Are the relatives committed to the child long term?
- Are the relatives able to meet child's needs?
- Are any services necessary?
- Does the relative acknowledge the abuse/neglect?
- Does the relative hold the parent accountable?
- How will contact with the parent be managed?
- Is a subsidy available? Does the family need to apply for TANF or other benefits? If so, has the agency helped the family apply?
- Will this preserve the child's cultural identity?
- Has a homestudy been initiated?
- Others in the household who need to be checked out?

Reasonable Efforts: APPLA

- Permanency *goal* for the child.
- Overuse of APPLA
- The objective is to craft the most stable, secure arrangement possible.
- "Permanency" includes something more than merely meeting the child's immediate physical, educational, social, and mental health needs.
- Key to the child's future happiness and success is the development of relationships with members of the child's family and communities.

Barriers to Permanence for Teens

- Focus on placement instead of permanency
- Once "another planned permanent living arrangement" selected permanency options not revisited
- Youth and families rarely present at hearings
- Insufficient participation by youth in case planning key for this age group
- The belief that at 18, one should be able to live on one's own and that generic skills are all that is needed
- Adolescents age out of system or are shifted to other systems without permanency
- When they say "NO" to a new family we don't unpack the no. A different discussion...
- Worker, legal system and caretaker bias become self fulfilling prophesy

CONCURRENT PLANNING for Adolescents

Reasonable Efforts to finalize an alternate permanency plan

APPLA and:

Reunification?
Adoption?
Relative Placement?



What about Independent Living & Emancipation?

- Consider Independent Living a set of services, not a permanency goal.
- IL services should meet the child's physical, psychological, emotional, educational needs
 - Job skills
 - Safe housing
 - Connections to family,
 i.e. siblings
 - Continuing education
 - Peer connections
 - Cultural identity

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